

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.....
TAMMY KITZMILLER, et al., . Civil Action No.
Plaintiffs . 04-CV-2688
vs. . (JUDGE JONES)
DOVER AREA SCHOOL DISTRICT, .
et al., .
Defendants .
.....

Deposition of: **BERTHA E. SPAHR**

Taken by : Defendants

Date : May 19, 2005, 10:11 a.m.

Place : Two School Lane
Dover, Pennsylvania

Before : Bethann M. Mulay, Notary Public
Registered Professional Reporter

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
By: PAULA KNUDSEN, ESQ.

For - Plaintiffs

THOMAS MORE LAW CENTER
By: PATRICK T. GILLEN, ESQ.

For - Defendants

KILLIAN & GEPHART, LLP
By: JANE GOWEN PENNY, ESQ.

For - Bertha E. Spahr

ALSO PRESENT: Michael Baksa
Rena Staub

I N D E X
WITNESS

Examination

BERTHA E. SPAHR

By Mr. Gillen

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EXHIBITS

B. Spahr Deposition
Exhibit Numbers

Page
Marked

1. Documents Labeled Research

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2. Handwritten Notes

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STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and all objections except as to the form of the question are reserved to the time of trial.

BERTHA E. SPAHR, called as a witness, having been duly sworn, testified as follows:

BY MR. GILLEN:

Q. Good morning, Mrs. Spahr. I've introduced myself to you off the record. I'll do it again for the purpose of the record. My name is Patrick Gillen, and I'm an attorney for the defendants in this case. And as you know, this is the time and place set for your deposition which is my opportunity to ask you questions under oath, get your answers, and as I see it basically to get your side of the story.

Plainly we have a dispute here. People have different viewpoints as to what happened and so on. This is my chance to find out what you know about the dispute.

There are a few facets of this process that

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1 would have been four years ago. I'm not sure of
2 the exact dates, but it was four years ago.

3 Q. That's quite all right. Don't worry about it.
4 If we look at Miller 6, again, there's another
5 e-mail from Mr. Hamilton in which he is seeking
6 your peanut brittle recipe among other things.
7 Did you ever have a discussion with Mr. Hamilton
8 in connection with this e-mail?

9 A. He came to my home to pick up the peanut brittle
10 recipe. He did indicate that he certainly will
11 think about us over this issue because he is at
12 heart a biology teacher. Did we discuss any
13 particulars of the situation, not really other
14 than he was certainly supportive and he will
15 always keep us in his thoughts.

16 Q. In your capacity as head of the science
17 department, did you ever have occasion to
18 discuss with Mr. Hamilton the manner in which he
19 presented evolutionary theory?

20 A. No, I did not.

21 Q. We're up through 2002, and it seems like at
22 least so far as you were concerned based on your
23 personal knowledge, things you heard or saw and
24 so on, the biology curriculum wasn't an issue of
25 controversy up to that period?

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1 A. I mean, you always-- We always had people in
2 the community, because it's a very conservative,
3 religious community, that when, you know,
4 evolution was brought up would always ask
5 questions or whatever. But we always tried to
6 take a middle of the ground road that we did not
7 offend many people.

8 Q. Well, let's talk about that, Bert, just look at
9 it in the period-- Well, let's look at
10 community concerns generally prior to 2003.

11 A. Okay.

12 Q. Tell me how those concerns came to your
13 attention.

14 A. They were never called to me in terms of my
15 attention. We were always very aware, though,
16 of the varying groups within the community and
17 simply took a very cautious presentation. Now,
18 I do not teach biology, so if you are asking me
19 exactly how it was taught, I can't respond to
20 that.

21 Q. And I'm not. I think I'm understanding better
22 now. Do I understand you correctly that you're
23 saying teachers in the science department knew
24 that they were teaching in this particular area
25 had a sense for the cultural environment?

1 A. That's correct.

2 Q. And then also an appreciation for the cultural
3 dimensions of this theory. Is that right?

4 A. That's correct.

5 Q. And they endeavor to be sensitive to those
6 considerations?

7 A. That's correct.

8 Q. If we look at the period prior to 2002, do you
9 recall any discussions with your teachers, your
10 science teachers, that were focused on the ways
11 in which they demonstrated that sensitivity to
12 the cultural context in which evolutionary
13 theory was presented?

14 A. No.

15 Q. So now we're in January 2003. Tell me, Bert,
16 did the subject matter of this litigation,
17 selection of the biology text, some controversy
18 surrounding that, or some concern expressed
19 relating to the presentation of evolutionary
20 theory, did they come to your attention during
21 2003?

22 A. 2003 was our year to order the new biology
23 textbook. We traditionally send our budget to
24 the administration and the board in January for
25 the following year. Since it was our cycle to

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1 order books, the proposed new biology book where
2 the biology teachers individually and together
3 reviewed various textbooks and their
4 recommendation was this at that point 2002
5 Miller and Levine biology book. That was sent
6 basically to the administration. We were told
7 it was going to be delayed a year because the
8 books that we had were still in relatively good,
9 usable condition.

10 We at that point took them at word that
11 that really was the reason that it was being
12 held up. In looking back now, we do question
13 whether there were other things behind it.

14 There was apparently some board interest,
15 okay, later on in the spring of 2003 which did
16 not get to the department, okay, where some
17 people either in the community or on the board
18 raised questions beginning with this evolution
19 issue.

20 Q. Let's get to that. You say there was apparently
21 some board interest?

22 A. I cannot be specific because it did not come to
23 the attention of the department until we got to
24 the fall of 2003. So it apparently had calmed
25 down somewhat. But then it was revisited in the

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1 fall, and then we as a department addressed the
2 questions and the concerns.

3 Q. Now, if I understand you correctly, Bert, you're
4 kind of inferring from the fall 2003 events that
5 the problem didn't just pop up in the fall of
6 2003?

7 A. No, it did not.

8 Q. Why do you say that, Bert?

9 A. And I'm not exactly sure to whom the gentleman
10 spoke that had the concerns, but in the spring I
11 think there were some questions either regarding
12 the selection of the book that we had done or
13 how evolution is taught in the classroom, how it
14 is presented. But then in the fall, and it was
15 early in the fall, we sat down. There is a lot
16 of confusion between origin of life and origin
17 of species.

18 Q. Are you referencing to the fall meeting, Bert?

19 A. Well, but this is-- When people see evolution,
20 they don't always see evolution the way it is
21 taught in the biology curriculum here. They
22 have their own concept of what they think it is.
23 And, you know, you have parents who will, you
24 know, raise-- And they have every right to do
25 so.

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1 Q. Do you recall Mr. Baksa using the term
2 creationism?

3 A. I remember the word creationism being used, yes.

4 Q. And I could see that. What I'm asking you, do
5 you recall Mr. Baksa saying that a board member
6 wanted creationism taught as opposed to, you
7 know, it coming up in the conversation?

8 A. I remember Mr. Baksa saying that a board member
9 wanted creationism taught. Now, I'm not sure
10 50 percent was there. I think it was of equal
11 time when the evolutionary issue was presented
12 in biology classes.

13 Q. Do you recall Mr. Baksa mentioning a board
14 member wanting other theories taught?

15 A. Not to my knowledge.

16 Q. Do you recall anything else of your-- Apart
17 from this memo, do you have a recollection of
18 your discussion with Mr. Baksa?

19 A. Yes.

20 Q. Do you recall anything else other than the
21 statement we've just discussed?

22 A. I remember asking Mr. Baksa, may I ask you which
23 board member has indicated this to know where
24 the red flag was coming from and are we going to
25 be prepared, and he responded to me it was

1 Alan Bonsell.

2 Q. Apart from these features of this conversation,
3 do you remember anything else?

4 A. No. But I think Mr. Baksa had indicated to me
5 and my science department that this was
6 obviously going to be a concern that we are
7 going to have to address sometime soon.

8 Q. Now, if you continue down that first paragraph
9 there, about halfway through there's a sentence
10 that begins, she, referencing you, explained to
11 Mr. Baksa that all biology teachers state that
12 another theory of evolution is creationism, but
13 creationism per se is not taught since it is not
14 addressed by the standards. Now, how about
15 that, Bert, do you recall telling Dr. Peterman
16 that?

17 A. Yes, I do.

18 Q. Now, it looks like in order to get that
19 information you had some discussions with your
20 science faculty about the issue. Tell me, what
21 was the basis for that statement or account in
22 this memo?

23 A. Since we are a standards-driven institution and
24 there was always the controversy even in terms
25 of getting the state standards over this

1 evolutionary issue, we followed the standard
2 which I believe is listed under biology letter D
3 that said that the theories of evolution need to
4 be taught because in the year 2006 or 7 there's
5 going to be the PSSA test which is going to
6 address these issues.

7 But to present a fair evaluation, they also
8 said that there are other theories out there;
9 namely, creationism. And they all mentioned it
10 and said we encourage you to go to your pastor
11 of your church or your family if you want a
12 discussion of that. And that was as much that
13 was ever done.

14 Q. When you say they, are you referencing your
15 biology teachers?

16 A. I am referencing the biology teachers. There
17 would be no other subject that would--

18 Q. Implicate this concern?

19 A. That's correct.

20 Q. Now, who had you spoken with in order to get
21 that information, Bert, about the way in which
22 creationism was presented in the classroom in
23 connection with the presentation of evolutionary
24 theory?

25 A. When we had various department meetings and

1 in-service days and we had all of the waiting
2 for these state standards and we were in the
3 process of rewriting our curriculum to match the
4 state standards, the subject came up. And the
5 group; namely, Jen Miller who was obviously the
6 veteran biology teacher, agreed that this is the
7 way we would all do it so that there would be
8 consistency in basically how it was presented.

9 Q. What did Jen say on that point?

10 A. That we would simply mention that creationism
11 was an alternate theory to Darwin's theory of
12 evolution and that we request that the churches
13 or if the families be able to present their own.

14 Back then students could literally ask
15 questions, and at that point the biology
16 teachers were comfortable in addressing these
17 issues. And, you know, the major reference was
18 please contact your own family, your pastor, you
19 know, or there are other reference books
20 available if you have those concerns. And it
21 was a very non-threatening situation at that
22 point.

23 Q. Sure. And it seems that you're saying that the
24 teachers are trying to just address any
25 questions or curiosities the student might have?

1 A. Back then, yes.

2 Q. You say back then. You say things are different
3 now?

4 A. Yes, because now the issue obviously is not even
5 addressed. You know, we teach what is necessary
6 for the state standards, and then they go on.

7 Q. When you say the issue is not addressed, Bert,
8 what are you getting at?

9 A. We don't talk about creationism. I'm not even
10 sure creationism is ever mentioned in the
11 classroom anymore, although I am not in a
12 biology classroom. You would have to ask a
13 biology teacher that question.

14 Q. Now, if you continue to the next paragraph,
15 Bert, there's a couple sentences there. I know
16 you can read them, but I'll read them for the
17 record. It continues, in asking for direction
18 in this matter, I have advised all Biology I
19 teachers to teach the approved school board
20 curriculum for Biology I. I advised them to
21 continue to mention that creationism is another
22 alternate theory of evolution. And then she
23 says, however, as principal, I am uncomfortable
24 with this topic and so on. Do you recall
25 Dr. Peterman so advising you?

1 A. Yes.

2 Q. What did Dr. Peterman say?

3 A. She basically directed me to direct the biology
4 teachers to continue with what had been past
5 practice, that you would teach evolution, you
6 would mention that creationism was an
7 alternative theory, and then request that the
8 families or the churches handle any explanations
9 that they would have since there are so many
10 different religious backgrounds in this
11 community.

12 Q. Do you recall anything else that Dr. Peterman
13 said to you relating to this issue?

14 A. I remember we had some discussions as to what
15 her concerns were if we decide that we are going
16 to teach creationism or it's going to be
17 something that's going to have to have equal
18 time with the evolution.

19 Number one, there was a time constraint.
20 That was another issue because it basically
21 comes at the very end of the semester. If
22 you've had snow days, you may not even get to
23 the issue. And now where are we going to find
24 the time to put in these additional things.

25 And the science teachers felt somewhat

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1 uncomfortable because they are not trained in
2 religious education. They are trained as
3 biologists but felt that they would not
4 necessarily have the background to do what would
5 be an appropriate job.

6 And as she pointed out, and she actually
7 said to me, which theory of creationism are you
8 going to teach and not offend somebody who is
9 sitting in the room. So that discussion did
10 come up.

11 Q. Apart from what you've told me that you remember
12 today, anything else come up with Dr. Peterman
13 that touched on this issue during her tenure as
14 principal?

15 A. Oh, I'm sure it did because when there was an
16 issue, whether it be are we going to get our
17 textbooks, when are we going to get our
18 textbooks, I always followed chain of command,
19 and I went from department chair to Dr. Peterman
20 who would then in turn sometimes go to Mr. Baksa
21 who was head of curriculum.

22 But, yes, we discussed issues. I'm certain
23 I said to her what is the holdup with this
24 biology book since this had never been a problem
25 before.

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1 And the interesting thing about it was it
2 was simply a new edition of the book that we had
3 already had, and it was approved. We had the
4 Miller and Levine book, but it was a 1998
5 edition. And so we were simply asking for a
6 newer, more modern copy of it. So we didn't
7 realize that there was going to be any
8 controversy.

9 Q. Now, I just want to make sure, Bert, it seems
10 like-- Well, Peterman left when? Did she leave
11 in 2003, can you recall?

12 A. It was the end of the last school year.

13 Q. So that's 2004?

14 A. She was there 2003-2004. Mr. Riedel came at the
15 beginning of this year, although you might want
16 to--

17 Q. To check, that's fine.

18 A. I think it was the end of last year.

19 Q. I'm not going to hold you to the dates. I'm
20 just trying to get a sense because it seems to
21 me--

22 A. She was there two years.

23 Q. It seems to me from what you're saying that the
24 holdup of the books, that's the holdup that
25 occurred in 2003, correct?

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1 A. The books were just ordered at the last minute
2 in August of 2004, right. We got them for the
3 school year.

4 Q. You'll see in this Exhibit Miller 1 there's a
5 number of enumerated points. Would you take a
6 quick look at those for me, Bert. You've
7 referenced that Dr. Peterman had some concerns.
8 Looking through those numbered items, one
9 through five, do you think that fairly
10 summarizes the concerns that Dr. Peterman
11 expressed to you?

12 A. Yes, I do.

13 Q. If you look beneath that enumeration, there's a
14 new paragraph which begins, in the public school
15 arena creationism-- Forgive me, it doesn't
16 begin this way. The second sentence says, in
17 the public school arena creationism must always
18 be mentioned as an alternate theory, but public
19 school teachers are teachers of their content
20 area and are not to be perceived as teachers of
21 religious instruction. Do you recall
22 Dr. Peterman making statements to you to that
23 effect during the conversations you had with
24 her?

25 A. I remember on one occasion she certainly brought

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1 that up. I don't know whether it was on this
2 particular one. But she did show concern that
3 we are teachers of biology and certainly not
4 teachers of religion and this could be a
5 problem. Yes, she did bring that up.

6 Q. Have you had any discussions with your biology
7 teachers about whether they reference
8 creationism currently?

9 A. No, I have not. It is my understanding that
10 since the statement was read I'm not even sure
11 the reference is made anymore, but you would
12 have to ask the biology teachers that.

13 MR. GILLEN: Let's take a brief break.

14 (Recess taken)

15 BY MR. GILLEN:

16 Q. Bert, as we broke off, you were making some
17 observations about the text purchase process and
18 holding up the text in 2003. And with that in
19 mind, I'd like you to look through the packet of
20 documents that's been marked Miller 5.

21 Flip back to some notes, handwritten notes,
22 that at the top of the first page have notes
23 from Bert Spahr. I ask you, Bert, to just look
24 at the first two pages of those notes I've just
25 referenced which relate to a meeting and which

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1 are dated 1/21/05 in the upper left hand corner
2 across from the first entry.

3 A. 1/21/05.

4 Q. You got it, Bert?

5 A. Yes.

6 Q. Having looked those over, Bert, do you have any
7 recollection of a discussion relating to text
8 usage?

9 A. Yes, I do.

10 Q. Tell me what you recall -- let me be more
11 specific -- in the 2003 period.

12 A. Mr. Baksa had asked us about a question that I
13 believe came from a board member indicating that
14 we had not used the textbooks, and he was asking
15 us why the textbooks were not used. And they
16 were referring to the 1998 edition of the Miller
17 and Levine biology book.

18 And we attempted to explain that in the one
19 year when we switched what was going to be
20 taught in the science curriculum we had all
21 ninth grade and all tenth grade students taking
22 biology at the same time. Now, this was only
23 going to occur for one year. We did not have
24 enough textbooks to give each student a copy.
25 We would not have presumed to ask the board to

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1 buy additional textbooks to be used for one
2 year. And so consequently textbooks were not
3 assigned to each student.

4 It was also after that that we instituted
5 the environment and the ecology curriculum as
6 the new required course for tenth grade. So we
7 had the one-year time frame in which roughly
8 probably 400 students were taking biology. We
9 did not have enough textbooks to pass out.

10 Therefore, most of the biology teachers
11 with the exception of Mr. Eshbach had class sets
12 of biology texts in the room for use by
13 students. Mr. Eshbach did not have a full
14 biology load. He was teaching another course.
15 Therefore, he had enough to assign each student
16 a text.

17 And that was why it was being questioned
18 why did we not use the books that we had
19 available. Number one, they would not have gone
20 far enough. Secondly, when the curriculum was
21 changed, we moved certain topics such as
22 classification to the eighth -- or the seventh
23 grade level at a different building. And,
24 therefore, this book dealt a great deal with
25 classification. And there were some other areas

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1 that did not address what we had now rewritten
2 the curriculum to match the state standards
3 with.

4 Q. So I just want to make sure I understand you,
5 Bert. Your first point, does that relate to a
6 year in which the state standards changed the
7 year in which biology would be presented and
8 Dover as a result compressed two years into --
9 two class years for the purpose of presenting
10 biology to try and bring themselves into
11 compliance with state law?

12 A. I do not know in which year exactly the state
13 standards were approved. There was-- And
14 that's in the one packet. There was about a
15 two-year time frame where we wrote it, and then
16 we rewrote it, and then they had the discussion.
17 And then finally it was approved.

18 During that time, we were in the process of
19 realigning our curriculum within the two
20 required course departments to match those state
21 standards realizing that eventually we thought
22 they would probably be passed. And it was in
23 this from the roughly 2000 to 2005 -- actually
24 2001 that we were actually trying to realign the
25 classes. Prior to that time, earth science was

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1 taught as a required course.

2 Q. Does that touch on your second concern you've
3 referenced which was the way in which the text
4 jibed with the actual presentation of material
5 in various classes?

6 A. That's correct.

7 Q. And there was sort of a disjunction between the
8 text the department had at that time and the way
9 in which the teachers were presenting specific
10 subject matters?

11 A. That's correct.

12 Q. And really sort of the net result of that is
13 various subject matters were being presented in
14 a variety of classes instead of just biology?

15 A. That's true.

16 Q. Do you recall Barrie Callahan speaking at school
17 board meetings about the biology text?

18 A. Yes, I do.

19 Q. Do you recall Barrie Callahan saying the kids
20 don't have books?

21 A. Yes, I do.

22 Q. If I look at your-- Well, let me ask you, Bert,
23 Miller 4 is a small set of documents, the second
24 page of which has the number one circled in the
25 upper right hand corner. And that is an

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1 approximate time line. Am I correct?

2 A. That's correct.

3 Q. Did you jot this down, Bert?

4 A. That is my handwriting, yes.

5 Q. And in compiling this document, did you consult
6 with your colleagues in the science department,
7 or was this your recollection? Was it kind of a
8 collective work?

9 A. It was a collective time line.

10 Q. Well, I see next beneath the entry for
11 January 2003 the next entry is fall 2003, and
12 there's a reference to a meeting with
13 Mr. Bonsell. What I want to ask you is, we've
14 got a conversation with Dr. Peterman that's
15 reflected in the memo dated April 1st, 2003, and
16 we've got a fall meeting coming up here that
17 we're going to talk about. In between April and
18 this fall meeting, was there any discussion that
19 you were privy to relating to the purchase of
20 the biology text or the biology curriculum?

21 A. Other than the discussion I had with
22 Dr. Peterman after the discussion I had with
23 Mr. Baksa.

24 Q. Have you told me what you can recall about the
25 discussion you had with Dr. Peterman?

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1 A. I have.

2 Q. Good enough. Other than that then, there was
3 really nothing until this fall meeting?

4 A. There may have been some passing of bodies in
5 the hall where we may have said, have you heard
6 anything on our textbooks. But it's not a case
7 where we had large meetings involving the
8 department over this issue.

9 Q. So we have a fall meeting with Mr. Bonsell.
10 Tell me how that meeting came to your attention.

11 A. I believe that meeting was at our suggestion.
12 There was I believe for him some confusion over
13 the issue of origin of species and origin of
14 life. I believe--

15 Q. I'm sorry, Bert, let me stop you there because
16 that's interesting to me. You say the meeting
17 was called at your suggestion and you believe
18 you had some confusion. That seems to point to
19 some discussion with Mr. Bonsell or some sense
20 for Mr. Bonsell's position.

21 A. I believe the discussion was between Mr. Bonsell
22 and Mr. Baksa. And then Mr. Baksa came to me or
23 to us -- I'm not exactly sure which one -- and
24 we suggested to him maybe we could clarify the
25 situation if the department and the biology

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1 teachers met with Mr. Bonsell and answered his
2 questions and basically his concerns.

3 They're the experts in the field. I am
4 not. I don't think Mr. Baksa's background is in
5 biology either. And we felt that this would be
6 a willing compromise to sit down with him and
7 basically answer his questions and concerns.

8 Q. Let me understand you. Is the conversation
9 you're referencing now the conversation we've
10 discussed where you and Mr. Baksa talked?

11 A. Well, and it may have been one that came
12 subsequent to that. I am not aware of that, but
13 I think there was this ongoing question and
14 concern that we felt we could resolve in the
15 fall meeting. It was fairly early in the fall.

16 Q. I just want to make sure I understand how the
17 story unfolds from your perspective. You know
18 you had a conversation with Mike, and this memo
19 seems related to that. As you sit here today,
20 can you remember any other discussions with
21 Mr. Baksa between April and the fall meeting?

22 And I guess what I'm trying to get at is,
23 plainly the discussion that's reflected in some
24 measure in this memo dated April 1, 2003 alerted
25 you to a possible problem, as you say, red flag.

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1 Now, what I'm trying to get at is, I could
2 see you having that in the back of your mind and
3 carrying it with you through the summer and
4 saying let's nip this in the bud or let's
5 address it. Or another way of looking at things
6 is Mike could have come to you periodically
7 throughout and said, you know, have you thought
8 of anything. Do you have any recollection of
9 what happened in this period?

10 A. It was not uncommon for Mr. Baksa when he was in
11 the building to come by the door and say, you
12 know, I would like to run this past you, you
13 know, I would like to give you a heads up. Can
14 I specifically recollect any other discussions,
15 I cannot.

16 Q. And that's why the next question for me is, all
17 right, you've got a concern because you're
18 suggesting, hey, maybe we can address this if we
19 have a meeting with Mr. Bonsell. Do you
20 recall-- And you think it was at your
21 suggestion. Is that--

22 A. I think it was at either my suggestion or the
23 suggestion of the department where they felt
24 that they would be more expertly able to answer
25 his questions and concerns.

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1 Q. In this intervening period between April and the
2 fall, had you had any discussions with
3 Mr. Bonsell personally?

4 A. No, I did not.

5 Q. So essentially any sense you have from
6 Mr. Bonsell's concerns would be derived from
7 conversations with Mr. Baksa?

8 A. That's correct.

9 Q. You've indicated that you think that the fall
10 meeting with Mr. Bonsell occurred at your
11 suggestion. What else can you recall about the
12 meeting, Bert?

13 A. Well, most of his questions were directed to the
14 biology teachers. Jen Miller being the veteran
15 teacher was the one who certainly had the most
16 responses. I did not chime in that much because
17 that's not my field. There were other biology
18 teachers present who also contributed. And I
19 think the reason for this was that his son was
20 going to enter a biology classroom that
21 particular year in the spring, spring semester.

22 Q. Let's look at that. Who was at the meeting,
23 Bert? There's Mr. Bonsell, there's you, there's
24 Jen Miller. Mike Baksa?

25 A. I believe Mr. Baksa was present.

1 Q. How about any other science faculty?

2 A. I think Bob Linker was there. Leslie Prall was
3 there. And I believe then Bryan Rehm may even
4 have been there. He at that point was the
5 physics teacher. Do I remember any others, no,
6 I do not.

7 Q. How about Rob Eshbach?

8 A. Yes, he was there.

9 Q. Looking at Bryan Rehm, he's the physics teacher,
10 is there any particular reason he would be
11 there?

12 A. Simply as a member of the science department. I
13 am not certain that he was present.

14 Q. How did it start? To the best of your
15 recollection, I just want to get a sense for how
16 the meeting unfolded. You're meeting as a
17 science department with Mr. Bonsell. Did he
18 present his concerns up front at the beginning?

19 A. I believe Mr. Baksa basically, you know, might
20 have indicated that we are all gathered together
21 to basically answer the questions and concerns
22 he had. I do not specifically remember the
23 mechanics of that meeting, and I do not.

24 Q. Do you recall any specific statements that
25 Mr. Bonsell made?

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1 A. No, I do not or even questions.

2 Q. How about any responses from Jen Miller, can you
3 recall the-- Well, I'll tell you what, can you
4 give me a sense for any of the concerns
5 Mr. Bonsell expressed during the meeting?

6 A. No, I cannot.

7 Q. How about Jen, Jen Miller that is, can you tell
8 me anything about the issues she was addressing?

9 A. I don't know the specific questions. I know
10 that she was very well prepared and she answered
11 the questions adequately. And as we departed
12 from the meeting, we all seemed to feel that he
13 was satisfied with the presentation that we had
14 given to him. That was our sense as we left.

15 Q. If you had to characterize the tone of the
16 meeting, was it collegial, cordial, civil?

17 A. Yes, indeed, yes.

18 Q. You said you departed thinking--

19 A. We addressed his concerns and questions and--

20 Q. Do you recall any specific scientific subject
21 matter coming up like carbon dating, fossil
22 record, stuff like that?

23 A. No, I don't.

24 Q. Any of the other science faculty speak?

25 A. I think there were some others who answered that

1 were biology teachers. I cannot tell you
2 specifically which one.

3 Q. How about the general thrust of Jen's comments,
4 get any sense for that in your memory as you sit
5 here today sort of what she made clear to him?

6 A. Yes, specifically the differentiation between
7 origin of species and origin of life and the
8 emphasis being made that the biology teachers
9 emphasize origin of species and change over
10 time. That was the big thing.

11 Q. This distinction you've just referenced, this
12 has come up a couple times. As you sit here,
13 Bert, I know you're not a biology teacher, nor
14 am I. I discussed this in some measure
15 yesterday with Jen, but can you recall what sort
16 of distinction Jen Miller conveyed to
17 Mr. Bonsell during this fall 2003 meeting?

18 A. I think it had something to do with a bird,
19 there was a bird in the tree, and how did the
20 bird adapt himself to survive in the
21 environment, did the beak get longer, did the
22 claws get longer. No one cared where the bird
23 came from. The bird was in the tree and changed
24 over time. That was the point of the emphasis.

25 Q. So change within species as opposed to change

1 across species?

2 A. There certainly was main emphasis on change
3 within the species. I do not know whether
4 change between species was brought up.

5 Q. Anything else you recall about that meeting?

6 A. No.

7 Q. Do you recall anything Mike Baksa said?

8 A. No.

9 Q. Was Dr. Nilsen present?

10 A. I can't answer that.

11 Q. Do you think Trudy Peterman was present?

12 A. I can't answer that either.

13 Q. That's fine. This is a meeting in the fall of
14 2003. About around what time, Bert? You said
15 you thought it was early?

16 A. It was early September or October, I would
17 assume.

18 Q. Between the meeting and the close of 2003, did
19 anything happen that you saw as tied to that
20 meeting or relating to the same subject matter,
21 evolutionary theory, the curriculum, the biology
22 text?

23 A. Well, we still had not gotten assurance that the
24 biology book that they had hoped to get was
25 going to be ordered. Again, in December or

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1 January of what would have been 2004 we
2 submitted or resubmitted our order for those
3 books, and we had not been guaranteed that we
4 would-- Now, orders are not usually sent out
5 before July 1 anyway. But we were trying to get
6 some sense of are the teachers going to go home
7 for the summer working on this new book to
8 present their lessons and their activities and
9 whatever or are we again not going to have that
10 particular edition to deal with in the following
11 year.

12 Q. That would be the summer of 2004?

13 A. That's correct.

14 Q. I'm trying to get a sense, was your concern,
15 Bert, that if you didn't get them in 2003 you
16 might lose your turn--

17 A. Yes.

18 Q. --altogether?

19 A. That was a concern because we are on -- or were
20 on a seven-year cycle. And then not only was
21 that a concern, then that throws the next
22 subject back a year behind in terms of not
23 getting their books.

24 Q. And that would be subject matter in the science
25 department?

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1 A. No. That was subject matter I believe it may
2 have been language arts. So it's an entirely
3 different department. Everyone is on a
4 seven-year cycle. So when ours were not
5 ordered, then the next year somebody else's was
6 delayed--

7 Q. Oh, I see, yes.

8 A. --a year because of the budget concerns.

9 Q. But apart from that -- I mean, I see you have
10 that concern -- was there any further
11 discussions with Mr. Baksa or anyone in the
12 administration for that matter relating to the
13 meeting, the issues that were addressed in that
14 meeting as we reached the wrapping up of 2003,
15 between this meeting in the fall and
16 December 2003?

17 A. I'm sure we spoke on this issue, whether it be
18 an in-service day or some other time, but I
19 can't recall specific dates.

20 Q. At any time in 2003 did you have any discussions
21 with any member of the board curriculum
22 committee apart from the discussion that you've
23 just described?

24 A. Not to my knowledge.

25 Q. At any time in that 2003 year did anyone from

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1 the administration ever get back to you with any
2 directions to change the biology curriculum or
3 presentation of subject matter in biology?

4 A. On certain in-service days we were directed to
5 basically revise curriculum as it needed to be
6 revised based on the new state standards. Were
7 we directed to change the curriculum as far as
8 evolution was concerned, not to my knowledge.

9 Q. Am I right, Bert, that the revision of
10 curriculum you've just referenced is an effort
11 to bring Dover's curriculum into, what shall I
12 say, to dovetail it with the state standards
13 we've been talking about?

14 A. That's correct.

15 Q. Well, that brings us to 2004 which by all
16 accounts was an eventful year. Let's look at
17 the period between January and March of 2004.
18 It's just the beginning of the school year.
19 We're going to focus on the biology text and the
20 curriculum issue. In that three-month period,
21 Bert, were there developments that touched on
22 those issues?

23 A. We did resubmit the budget with the Miller and
24 Levine book as indicated that that was our
25 choice for our biology text. Now, that is done

1 by the biology teachers together. They review
2 various books, and there were many different
3 books that they looked at. And this was their
4 selection. And so we resubmitted it again so
5 that we would have it for basically the
6 2004-2005 school year.

7 Q. Did you participate in the text review in
8 biology--

9 A. No, I did not.

10 Q. --or do you defer to your professionals?

11 A. I--

12 Q. Looking at that period, as you say, in the
13 ordinary course the text request would go in.
14 Any communications with the administration
15 relating to the department selection of a text?

16 A. They usually relied on our professional
17 judgment. And if we felt that this was an
18 acceptable biology book, it usually has never
19 been questioned.

20 Q. Looking at the period January through March
21 2004, was there any conversations with any
22 members of the board curriculum committee during
23 that period relating to the biology text?

24 A. We had several meetings with the curriculum
25 committee of the board. The one that I remember

1 was in June, though, of 2004. But there was one
2 that preceded that in this room -- I cannot tell
3 you the exact date of that -- where we were
4 present, and it had to do with the accepting of
5 books for the family and consumer science
6 department. It was that. But I cannot tell you
7 exactly when that meeting was. It was in this
8 room, and it was prior to this June meeting.

9 Q. Just tell me generally, there was discussion
10 about that family and consumer sciences text
11 here?

12 A. Oh, my, yes. Oh, my, yes, that poor woman who
13 is a very gentle soul and certainly was not
14 prepared for what was coming. It was pretty
15 upsetting, where the comparison was made between
16 the edition that she had and the new edition
17 that they had recommended. And it was pointed
18 out to her that there were only five words'
19 difference in the entire text. I do remember
20 that quite well.

21 Q. Who pointed that out to her?

22 A. Well, members of the curriculum committee were
23 Mrs. Harkins, Mr. Buckingham, and Miss Casey
24 Brown. One of the meetings Casey Brown did not
25 attend. It was actually Mrs. Harkins who

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1 pointed that out. And we had also brought the
2 other textbooks, those of the chemistry and
3 those of the biology, at the same time. But
4 that was the time, the only time, when the other
5 department was present as well at that
6 curriculum meeting.

7 Q. Did you leave this meeting you've just
8 referenced prior to June 2004 with the sense for
9 whether the family and consumer sciences text
10 would be purchased?

11 A. We had doubt. We did not know.

12 Q. You've referenced a meeting in June. Can you--
13 Towards the end of the month or the beginning,
14 do you know when it occurred? I see your time
15 line gives the month.

16 A. It had to be before we left school, and the
17 reason that I know that is I specifically asked
18 Mr. Buckingham if he would assure us that my
19 biology teachers would have this new text to
20 start the beginning of the school year because
21 they had planned to do work using the new
22 textbook obviously during the summer months.
23 And it certainly would be a tremendous waste of
24 time if, in fact, they knew full well that the
25 textbook was not going to be chosen.

1 compiling materials?

2 A. Some board meetings that you attended there were
3 not sufficient numbers of agendas; and,
4 therefore, we sometimes asked the president of
5 the association who was always in attendance if
6 we could have a copy of hers. And that's where
7 they came from.

8 Q. If you'll page through the ones relating to the
9 June 7th meeting, Bert, and just let me know if
10 you have any-- Oh, there's only one set, and
11 that's SB. Do you have any notes that relate to
12 the June 7th board meeting?

13 A. Not to my knowledge. If there were notes, they
14 would be attached to this.

15 Q. Because of the way you guys put the materials
16 together?

17 A. Yes, and because I can recognize the
18 handwriting.

19 Q. Thanks.

20 A. Like this is Rob Eshbach's I mean.

21 Q. There's a notation on the first page of this
22 June 7th agenda here that says, Bert, so--

23 A. That's me.

24 Q. That's you. I thought. Did you attend the
25 June 7th, 2004 meeting?

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1 A. I can't remember that. I know I was at the
2 June 14th meeting.

3 Q. Well, look at that notation, and that's what I
4 wanted to ask you about. Do you think that
5 Sandy Bowser might have scribbled that notation
6 on the front page as a note to you to let you
7 know what she heard at the June 7th--

8 A. That's a possibility. I don't know where this
9 may have come up that it's on this front page,
10 but Sheila obviously is referring to Sheila
11 Harkins says they were never used and they're
12 six years old. And the comment was bio never
13 used the books.

14 Well, this had to be in relationship, okay,
15 to this one year where not-- It's not that the
16 students didn't use the books. It was the
17 students didn't get a book to carry home with
18 them. They were used within the classroom. And
19 I do believe that it was probably taken out of
20 context. And I think this was to basically
21 alert me that this may be one of the reasons why
22 you're not getting new ones, you didn't use the
23 old ones anyway.

24 Q. That's what I was going to ask you about, Bert.
25 When you look back at it, it seems like Barrie

1 Callahan, maybe Sheila Harkins, and others had
2 what was a mis-perception about use of that
3 text. Is that accurate?

4 A. I think so. There were some other issues with
5 the text. The text was not certainly as usable
6 when we changed the curriculum because the
7 emphasis of that book was in the area of
8 classification, and we no longer did that. So
9 it certainly was not as useful as some of the
10 other reference books that we had available for
11 student use.

12 Q. I think I know the answer, but let me just ask
13 you, do you have any recollection of attending
14 the June 7th meeting?

15 A. No, I do not.

16 Q. Let's look at the next set of minutes. I'm
17 calling them minutes. Actually it's the agenda
18 for the June 14th, 2004 meeting. You said you
19 attended that, Bert?

20 A. Yes, I did.

21 Q. Was there a specific reason?

22 A. Well, if you go under to curriculum, we thought
23 the books for the science department, okay, were
24 going to be approved. And, therefore, I was in
25 attendance for that reason to know whether they

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1 rather contentious meeting. I mean, there were
2 some exchanges that actually occurred between
3 board members that-- Now, specifics of that--

4 Q. Well, let's just run through the board members.
5 Well, let me ask you this, let's start with
6 people in the public, do you remember any public
7 comment by Barrie Callahan?

8 A. I don't know whether it was that specific
9 meeting, but Barrie Callahan often spoke at
10 board meetings. And she always addressed her
11 concern that students get the newest science
12 books so that they be most updated. And she
13 always wanted to know why the books had not been
14 ordered and why they had been delayed.

15 Q. Do you recall her making statements to that
16 effect at this meeting or can you--

17 A. Well, somewhere in those meetings she always
18 questioned why the board had not approved the
19 new books when the money for it had been in the
20 budget.

21 Q. Was she referring-- She's referring to what
22 we've already talked about?

23 A. All the science-- See, the whole science
24 department ordered new books. Now, some were
25 automatically ordered without question, the

1 physics, the physical science, I think even the
2 anatomy and physiology, although they may have
3 been on that second one. And the chem of course
4 then went. They approved those. But there
5 were-- The entire science department is on that
6 seven-year cycle, and every seven years we get
7 the opportunity to order new texts.

8 Q. You've mentioned some that were automatically
9 purchased. Were they of the same age as the
10 other books in chemistry and biology?

11 A. Yes. And one set of books for the -- well, it
12 was called STS at that time which is science,
13 technology, and society. Today it's really
14 environment and ecology. When we implemented
15 that new course after that one year where all
16 ninth and tenth graders took the biology course,
17 those books were ordered out of our cycle and
18 sequence because we had adopted the new course
19 and we needed them for the following year, and
20 without discussion, that was--

21 Q. So did your department put in the request for
22 new books in that subject area?

23 A. Actually the year before we were to be cycled,
24 yes. And that--

25 Q. And, therefore, you didn't request them again?

1 A. That's correct.

2 Q. Do you recall any exchanges between
3 Mrs. Callahan and Mr. Buckingham at this
4 June 14th meeting?

5 A. There were some words exchanged. Lonny Langione
6 also spoke, and there were some exchanges.
7 Larry Snook -- now, these are all former board
8 members -- basically spoke under public comment,
9 and it got somewhat heated.

10 Q. Were the heated exchanges both between board
11 members and the public?

12 A. Both.

13 Q. And between board members and board members?

14 A. That's correct.

15 Q. Let's look at the exchanges between board
16 members and the public. Do you remember any
17 specific statements that Mr. Buckingham made in
18 response to public comment?

19 A. I believe this was the board meeting in which
20 the statement by him was someone died on the
21 cross so many thousand years ago.

22 Q. Do you recall how he came to make that
23 statement?

24 A. Not exactly.

25 Q. Do you recall him saying anything else about the

1 biology text?

2 A. Not at that point. I know there was also some
3 public comment in which a woman stood up and
4 read at length many verses from Genesis. I
5 think this was the same board meeting. And that
6 again I believe was under public comment.

7 Q. Anything else memorable from Bill Buckingham's
8 statements?

9 A. No.

10 Q. How about Alan Bonsell, do you recall him
11 responding to public comment?

12 A. Not specifically.

13 Q. How about Heather Geesey, do you recall anything
14 she said at the meeting?

15 A. I do not know whether it was this meeting-- We
16 ended up attending a lot of board meetings. I
17 do not know whether it was this one. There was
18 a statement made by Mrs. Geesey, and I'm not
19 exactly sure in reference to what. And Rob,
20 Jen, and I stood up simultaneously and went to
21 the podium. And it had to do with something
22 about attorneys and the teachers.

23 Q. We'll get to that in due time.

24 A. I'm not sure what board meeting that was, but it
25 was a board meeting.

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1 Q. Apart from that statement by Heather Geesey, do
2 you recall anything she said relating to the
3 biology text?

4 A. No.

5 Q. How about Jane Cleaver?

6 A. No.

7 Q. How about Angie Yingling?

8 A. No.

9 Q. How about Sheila Harkins?

10 A. Not specifically.

11 Q. You said not specifically. In general do you--

12 A. She was not president of the board then, so I
13 don't specifically remember her being singled
14 out.

15 Q. I understand. If you look at the agenda here
16 we're talking about, there's a statement there
17 that says, Bonsell intelligent design. Does
18 that trigger any--

19 A. No, it does not.

20 Q. Bert, if you would, I'd ask you to look through
21 Miller 2. If you look about halfway through
22 that pack of documents, there's a document there
23 that's headed at the top -- it's directed to
24 Mr. Baksa -- and it begins, the new biology text
25 we would like to order is Prentice Hall Biology

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1 by Miller and Levine copyright 2002. It
2 concludes with, thank you, biology department.
3 Does that look familiar to you, Bert?

4 A. Yes, it does.

5 Q. Did you produce that document?

6 A. I did not.

7 Q. Who did?

8 A. Members of the biology department.

9 Q. And that's the process we've described?

10 A. That's correct. I believe Jen Miller was the
11 lead person in writing it.

12 Q. If you flip two pages, you'll see a document
13 headed Dover Area School District and beneath
14 that, Survey of Biology Books Used in Area
15 Schools. If you flip to the next page, Bert,
16 you'll see product profile for a book that says
17 -- it's a book by Bob Jones University Press.
18 And then if you flip further, you'll see
19 handwritten notes headed at the top, Curriculum
20 Committee and dated June 4, 2004. Do you
21 recognize those, Bert?

22 A. I recognize the top two documents. I do not
23 recognize this, and I do not know whose
24 handwriting it is.

25 Q. So let's look at the top two then. Tell me, if

1 you would, when did you first see those
2 documents?

3 A. We were in a curriculum meeting with the
4 curriculum committee, and these two documents
5 were handed to us while we were in attendance in
6 the meeting. Somebody had contacted Christian
7 School of York, Delone Catholic, and York
8 Catholic to inquire what textbook they use. The
9 other book was a suggestion that was given to us
10 to look at in lieu of the biology book that we
11 were suggesting.

12 Q. Let's take a look at that now. You indicated
13 there was a meeting of the board curriculum
14 committee?

15 A. I believe in this room.

16 Q. Can you date it?

17 A. If you look at the bottom of the e-mail or the
18 book having to do with Bob Jones University, it
19 says 6/8/2004. I'm assuming that's the date I
20 received it. So I would think it would be
21 sometime early in June. And the notes, if you
22 also look, are dated that same day, 6/4, of the
23 curriculum committee.

24 Q. But you don't recall seeing the notes?

25 A. I do not know whose notes they are, no, I do

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1 not.

2 Q. At this board curriculum committee you're
3 recalling now, who was present?

4 A. Mr. Buckingham, Mrs. Harkins, Mr. Baksa, Jen
5 Miller, I believe Rob Eshbach, and myself. I do
6 not know if Bob Linker was in attendance. He's
7 a coach, and sometimes if you have meetings
8 after school, he has duties that are elsewhere,
9 so.

10 Q. How about Casey Brown?

11 A. One of the meetings with the curriculum
12 committee Casey Brown was not in attendance, and
13 I'm not sure for what reason. But one she was
14 not here.

15 Q. How about Alan Bonsell, do you recall him being
16 there?

17 A. I do not recall whether he was present.

18 Q. How about Richard Nilsen, Dr. Nilsen?

19 A. I don't remember that either, and I'm not sure
20 if Dr. Peterman was there.

21 Q. What was the subject of the meeting?

22 A. We were again since this obviously is the
23 beginning of June of 2004 still trying to
24 resolve are we going to get the Miller and
25 Levine biology text before we left to go home

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1 from school because the purchase order would
2 have gone out the 30th of June in preparation
3 for the July 1 change. And so we were still
4 discussing the book.

5 Q. Do you recall anything more specific about the
6 discussion? Discussing the book in what way?
7 Well, do you recall anything Mr. Buckingham
8 said? Was he complaining about the book?

9 A. Well, he still had questions about the book. I
10 don't know whether complaining about it, but he
11 certainly still had questions. This was the
12 reason that he had directed I believe Mr. Baksa
13 to contact these other -- and obviously these
14 are religious schools here -- only to find out
15 Delone Catholic had the same book that we did
16 which was the Miller and Levine book.

17 The suggestion was also would we -- because
18 we had reviewed many different texts, not just
19 the Miller and Levine book, Lenko, Prentice
20 Hall, Holt, Rinehart and Winston. We had
21 reviewed some and of course were handed this as
22 a possible suggestion for review.

23 Q. Who handed it to you?

24 A. I believe this was given to us by Mr. Baksa at
25 that meeting.

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1 Q. Did Mr. Baksa ever tell you to review any of
2 those books?

3 A. No. He just handed it to us, and the book was
4 not present.

5 Q. And the same thing with the book that's from Bob
6 Jones University Press, did he--

7 A. That's the one I'm referring to, that one. We
8 got both of these from him at that meeting,
9 these documents.

10 Q. But he didn't tell you to review any of these it
11 sounds like.

12 A. No.

13 Q. Is that right?

14 A. Not specifically, no.

15 Q. How about in terms of recalling the discussion
16 had at the meeting, do you recall any specifics?

17 A. I think that may have been the meeting-- It
18 certainly was one of those curriculum meetings
19 in June where I believe I looked at
20 Mr. Buckingham, and I said to him, if I hear you
21 say man and monkey in the same sentence one more
22 time, I am going to scream. That may have been
23 the meeting.

24 Q. Tell me about that. Was Mr. Buckingham saying
25 man and monkey during this meeting to the extent

1 you can recall?

2 A. Yes.

3 Q. Well, tell me what he said in connection with
4 that--

5 A. Well, man and monkey in the same sentence
6 sometimes has to do with certain people's
7 perception of evolution. We have to my
8 knowledge never taught that man came from a
9 monkey. But much of this man and monkey
10 conversation had to do with a mural that was in
11 the school district that was given to the, if
12 you will, I guess science department by a
13 student. It was his senior focal project in the
14 late 1990 something, '98 I believe maybe, where
15 he painted a very large mural, 16 feet by
16 4 feet, of the traditional evolutionary assent
17 of man that you often see where on the one end
18 you had the four, you know, whatever and the
19 other end the upright man.

20 That mural sat in one of the science rooms,
21 now, not the present ones because the whole
22 building has been redesigned. And I think there
23 were certain members of the board and certain
24 community members that were offended by the fact
25 that that was in the school system.

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1 Q. Let's stop right there. You say I think certain
2 members of the board were offended. Do you have
3 any specific members in mind?

4 A. Yes, Mr. Buckingham. And there were also other
5 employees in the school district that found that
6 mural to be offensive because of their religious
7 convictions.

8 Q. I think I know the answer to this, but how do
9 you know that, Bert?

10 A. Because over one weekend the mural was taken out
11 of the biology room and burned is how I have
12 that feeling.

13 Q. I thought I might have that sense, too. Bert,
14 if you would, would you look at Miller 4, top
15 page. Let me refresh your recollection for the
16 purposes of this little section of the
17 deposition here. That looks like-- That first
18 page of Miller 4 is titled, history - mural
19 evolution of man. Is that a document that you
20 created?

21 A. Yes.

22 Q. Where did you get the information for that
23 document, Bert?

24 A. I lived it.

25 Q. You did?

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1 which you as the science faculty are responding
2 to them?

3 A. Other than that brief exchange, it's always been
4 a relatively civilized meeting. That probably I
5 pushed it on that one, but finally I had had it.
6 His concern was he felt, did not know, but felt
7 that we were teaching that man comes from a
8 monkey.

9 Q. Now, did he say that?

10 A. Yes, in some discussions he actually said that.
11 And I said to him, and the biology teachers
12 obviously said it more emphatically than I did,
13 that was not my perception. To my knowledge--
14 Now, I have to say to my knowledge because I am
15 as department chair a facilitator of doing
16 things. I am not a first line supervisor. I do
17 not have the opportunity to go into biology
18 classrooms and see and hear what they are
19 teaching. That's not part of my job
20 description.

21 So I'm saying, okay, his perception was we
22 teach man comes from a monkey. And I felt that
23 that came about because of the relationship to
24 this mural, if the mural is sitting in a
25 classroom. And it was because the building and

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1 grounds people refused to hang it on the wall so
2 it had a permanent hanging. So this is where I
3 got some of the clue that something was amiss
4 here.

5 The science department had requested that
6 like all the other murals in the school it be
7 permanently affixed to the wall so it was
8 stationary. And for whatever reason, the
9 building and grounds people would not do that.
10 And so it was sitting on the chalkboard in the
11 back of the room in the tray.

12 Q. Let me ask you, Bert, the document you created
13 which is the first document in the packet marked
14 Miller 4 halfway down has a reference to a
15 Mr. Reeser?

16 A. That's correct.

17 Q. Was Mr. Reeser building and grounds?

18 A. He was the head of building and grounds for the
19 district, not just the high school, for the
20 district, yes.

21 Q. Would Mr. Reeser be the person who would be
22 charged with seeing to it that the mural was
23 affixed as the department desired?

24 A. We originally asked the janitorial staff that
25 services our building which would have been the

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1 high school, and they in turn apparently before
2 they could hang it up had to get permission from
3 Mr. Reeser, and that permission was not granted.

4 Q. Continue, Bert, with your story. You've got
5 this sense that the mural is underlying
6 Mr. Buckingham's concerns, and you bring that to
7 his attention. What happens next? What's the
8 nature of the exchange?

9 A. I specifically asked him, does this go back to
10 the time of the mural because man and monkey
11 would certainly evolve from this picture. And
12 he questioned as to whether that was what our
13 biology department was teaching in these biology
14 classes.

15 And it was at that point that Jen Miller
16 and the biology people responded to that because
17 I could not answer that. I did not know that.
18 That pretty much, you know, once we had gotten
19 over that, that ended it, and we went on to
20 something else.

21 Q. Do you recall what Jen said?

22 A. Not specifically. But to my knowledge, she
23 indicated that none of the present biology
24 teachers ever teach that man comes from a
25 monkey.

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1 Q. You say to your knowledge, Bert. Are you saying
2 based on what Jen had told you earlier about the
3 way in which she presented evolutionary theory?

4 A. Yes. I do not have that firsthand.

5 Q. We've got some statements by Mr. Buckingham at
6 this meeting. How about you say Sheila was
7 there. Did Sheila Harkins say anything?

8 A. Not that sticks out in my mind.

9 Q. Did she react or how did she react to
10 Mr. Buckingham's comments?

11 A. I think she raised her eyes when I spoke to him,
12 as I recall. But she did not make a comment,
13 you know, in regard to what he had said to me.

14 Q. You say you let Mr. Buckingham have it that
15 time?

16 A. I don't know whether I'd say have it. I just
17 simply said to him, if I hear man and monkey in
18 the same sentence one more time, I am going to
19 scream indicating that I had heard enough of it.
20 But, I mean, that was the only exchange. I may
21 have raised my voice, but, I mean, I didn't--

22 Q. How about any of the other biology teachers, do
23 you recall them saying anything at this meeting?

24 A. I'm sure they had input. I'm not sure
25 specifically what. Our major concern at the

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1 June meeting, wherever this was, okay, was are
2 we going to have this biology book for the start
3 of school. It was the last day of school. We
4 wanted to go home. And so we didn't want to
5 delay this any longer than we needed to. Our
6 purpose was to find out will we have a biology
7 book. And that's primarily. And then the next
8 monkey wrench.

9 Q. Miller 4 references the destruction of the
10 mural. Do you recall any discussion with
11 Mr. Buckingham relating to the destruction of
12 the mural?

13 A. Not with Mr. Buckingham. I don't think
14 Mr. Buckingham was in the school district at
15 that time. So-- Now, he certainly-- I think
16 somewhere in all of our meetings the destruction
17 of the mural came up because a board policy was
18 created on accepting contributions from students
19 and outside sources as a result of that where
20 the board I guess had not been asked for
21 approving the fact that the student gave this
22 mural to the school.

23 I'm not exactly sure what the mechanics
24 were whereby the student gave it to the school
25 because it was in a classroom of a teacher who

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1 (Recess taken)

2 BY MR. GILLEN:

3 Q. Bert, we were speaking about a meeting with the
4 board curriculum committee which you believe I
5 think was sometime in June?

6 A. That's correct.

7 Q. We had some discussion about the exchanges that
8 occurred in that meeting. I want to ask you, do
9 you remember the book Of Pandas coming up at
10 that time?

11 A. It did not come up at that meeting.

12 Q. You have a definite recollection that it did
13 not?

14 A. I do.

15 Q. How about specific complaints that
16 Mr. Buckingham had with the text?

17 A. One of Mr. Buckingham's complaints was that it
18 was laced with Darwinism.

19 Q. Do you remember him saying that?

20 A. Yes.

21 Q. Do you remember--

22 A. I do not know if it was at that specific
23 meeting, but that was one of his complaints
24 about the textbook that we had selected.

25 Q. Did he tell you what he meant by that? Did he

1 elaborate?

2 A. He indicated that references to Darwin's theory
3 of evolution was in more than one place in the
4 chapter in the biology text on evolution.

5 Q. Do you remember him going through the text in
6 any way with page numbers or anything?

7 A. Yes. And that is on a document which I believe
8 you have in your possession.

9 Q. Are you referencing to these handwritten notes?

10 A. No. It is a typed document.

11 Q. Why don't you take a look at Miller 2. Does
12 that document look familiar to you?

13 A. Yes, it does.

14 Q. Do you think that you saw this document we're
15 looking at now which is one of the documents in
16 Miller 2 headed, Teachers Edition Prentice Hall
17 Biology Miller/Levine with a handwritten
18 notation, given to Jen Miller in the upper right
19 hand corner, do you think you've seen that
20 before?

21 A. Yes, I have.

22 Q. Do you think you saw it in connection with the
23 meeting we're talking about now in June of 2004?

24 A. I do not know if we received it at that specific
25 meeting, but we received a copy of this after

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1 Mr. Buckingham had reviewed what was the teacher
2 edition of the 2002 Miller and Levine book. And
3 that was the only one that we had for him to
4 review. It was sent to us by the Prentice Hall
5 rep.

6 And some of the objections that he cited
7 here had to do with references that appeared in
8 the teacher's edition that would never have been
9 seen by a student.

10 Q. Do you recall any discussion at the meeting
11 along the lines you just suggested?

12 A. I remember Jen Miller pointing out to him that
13 this was not a student edition of the book but
14 it was the only one that we had available for
15 him to take with him to review.

16 Q. If I understand you correctly, Bert, you're
17 saying Jen was pointing out to him that some of
18 his marked pages were pages that students would
19 never see?

20 A. That's correct, where they had suggested
21 discussion questions. They had suggested
22 activities to be used by the teacher, whether a
23 teacher chose to do so. The student certainly,
24 though, would never have seen those suggestions.

25 Q. Apart from that exchange between Mr. Buckingham

1 and Miss Miller and what we've already talked
2 about, do you recall anything else being said at
3 the meeting by Mr. Buckingham about the text or
4 his reservations with the--

5 A. Not at that particular meeting, no.

6 Q. You say not at that particular meeting. Did you
7 have discussions with him later?

8 A. I did not have discussions with him later.
9 Subsequently to this June meeting, right before
10 we left to come home from school, this book rep
11 sent us and Rob received the book the 2004
12 edition of Miller and Levine.

13 I immediately because I am an honest person
14 called Mr. Baksa and I said, you need to be
15 prepared that there is now a 2004 edition of
16 this textbook out there before the vote which we
17 thought was going to occur in July goes down to
18 purchase the 2002 edition.

19 Q. Stop right there. I see where you're going.
20 Let me ask you, about when did you get the 2004
21 edition?

22 A. It was sometime between this meeting and when we
23 left to go home for the summer.

24 Q. Now, if you turn the page on Miller 2, there's
25 an e-mail I don't want you to look at. Turn the

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1 page again if you would, Bert. We're looking at
2 a page that has at its top the heading, Beyond
3 the Evolution versus Creation Debate. It has a
4 handwritten notation, given to me by Baksa
5 spring 2004. Do you recall seeing this
6 document?

7 A. I recall seeing it. I have a copy in my file.

8 Q. When did you see this Bert?

9 A. I cannot tell you what meeting this was given to
10 us by Mr. Baksa, but it was sometime in the
11 spring of 2004. It was before that summer
12 curriculum meeting.

13 Q. Before the June meeting we've been discussing?

14 A. I believe.

15 Q. Do you recall a discussion of this chart?

16 A. No, I do not.

17 Q. If you flip the page again, Bert, to a document
18 that is headed Dover Area School District
19 Changes in the 2002 and 2004 Copyright Biology
20 Books from Prentice Hall, do you recognize that
21 document?

22 A. Yes, I do.

23 Q. Does that document relate to the process you've
24 just described of receiving an updated edition
25 before the close of the school year in the

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1 spring of 2004?

2 A. The book that we received was very close to when
3 we left at the end of school which would have
4 been in June. That was when we got the 2004
5 edition. But, yes, I recognize this document.

6 Q. Now, if I look at Miller 4, I see an entry for
7 July 2004, and it references that J. Miller,
8 Spahr, Baksa, Nilsen reviewed the chapter on
9 evolution. Now, let me ask you, did that review
10 take place at the beginning, the middle, or in
11 the end of July?

12 A. I have no idea. I know we were all home for the
13 summer vacation, and all of us came to
14 Dr. Nilsen's office to review the two editions
15 of the book side by side.

16 Q. Do you know if the meeting you've just
17 referenced occurred before or after whatever
18 board meetings were had by the school board in
19 July of 2004?

20 A. My recollection is that it was probably before
21 because the ordering of the book was tabled
22 until the August meeting in terms of having
23 people review the comparison.

24 Q. So you think the review took place prior to the
25 July board meeting?

1 A. I believe so.

2 Q. Then let's look at that document headed Changes
3 in the 2002-2004 Copyright Biology Books. Tell
4 me what sort of reviews you conducted.

5 A. We opened both books to the chapter on evolution
6 because the other chapters were not in question,
7 and we read paragraph by paragraph, picture,
8 diagram by diagram to see where the changes were
9 between the two editions.

10 Our conclusion when we got to the end was
11 that we felt that the 2004 edition would
12 probably be less offensive to most people than
13 the 2002 edition. And, therefore, our
14 recommendation was that we actually purchase one
15 that was not already two, three years old but
16 the 2004 edition.

17 Q. Did you look through the book yourself, Bert?

18 A. I was, yes, sitting at the table.

19 Q. As you went through it, did you compare the
20 presentation of evolutionary theory in the 2002
21 edition and in the 2004?

22 A. Yes.

23 Q. Did you have an impression as to the thrust of
24 the changes made in the presentation of the 2004
25 text?

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1 what had previously been done in the textbooks
2 in evolution. I think I was the one that
3 basically wrote down words. I believe Jen had
4 one book. I believe Mr. Baksa had the other
5 book. And Dr. Nilsen would be floating in and
6 out. So it was kind of a collaborative effort
7 where we were literally comparing one chapter to
8 the other.

9 Q. I don't want to belabor it. I just want to get
10 a sense for the nature of that review. I know
11 biology isn't your field. So when you're
12 reviewing the text, I know you're comparing the
13 presentation of evolutionary theory in the two
14 versions, correct?

15 A. That's correct.

16 Q. What are you reviewing them in light of? I
17 mean, what are you looking for?

18 A. Well, we certainly were looking to see if, in
19 fact -- because certain chapters are never
20 changed from one edition to another. We were
21 looking to see whether the new chapter in the
22 2004 book reflected any changes in light of the
23 controversy that had been seen in print in the
24 last several years because certainly this issue
25 has been in print, e-mail, in documents,

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1 discussed all kinds of places. And we were
2 there to see whether they had made changes that
3 would make the book less controversial to
4 people.

5 Q. You say seen in print. Are you referring to
6 just media generally apart from Dover Area--

7 A. Yes, yes.

8 Q. When you are referencing that sort of
9 controversy, Bert, what are you getting at
10 exactly?

11 A. Well, there were court cases that were taking
12 place in Georgia, there were some in Kansas,
13 there were some in Michigan which involved this
14 evolution and creationism discussion, and
15 certain books certainly came up.

16 In Texas the discussion came up. And one
17 of the big things is Texas purchases one book
18 for the entire state. And, therefore, if you
19 are going to have this purchased, then you
20 certainly want to make the chapter that deals
21 with evolution the least offensive to attract
22 the greatest audience. And we felt it literally
23 had been softened.

24 Q. You reference the evolution versus creationism
25 debate, and we're talking about the period of

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1 July 2004. By that time, Bert, did you have an
2 opinion concerning whether intelligent design
3 was equivalent to creationism?

4 A. I never heard the word intelligent design up
5 until that time.

6 Q. Up until what time?

7 A. Actually August of 2004.

8 Q. So are you just-- Well, let me ask you, you're
9 saying in the June board meetings you didn't
10 hear the term intelligent design?

11 A. I did not because I-- I don't remember it,
12 okay. I do not remember it. It certainly was
13 not a discussion among the members of my
14 department. Intelligent design never came to us
15 until the book Of Pandas and People came to our
16 attention.

17 Q. So when you're reviewing the text here in
18 July 2004, you're reviewing the text to see if
19 it's less controversial from the standpoint of
20 creationism?

21 A. Well, certainly less controversial with the
22 introduction of the words primates meaning
23 monkeys or common descent. That was a big bone
24 of contention, the stress being change over
25 time. And those were the kind of things that we

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1 were basically looking at, at that particular
2 point in time.

3 Q. Let me see if I can go at this a different way
4 here. When you came away from your review of
5 the text, you say that you thought it would be
6 more acceptable?

7 A. We felt that.

8 Q. Tell me why.

9 A. Because some of the words that had been used,
10 some of the diagrams and some of the pictures
11 were removed from the 2004 edition. This whole
12 idea of common descent was a big controversial
13 issue, anything obviously having to do with
14 primates.

15 But when we reviewed it, and we basically
16 did it from the beginning to the end of the
17 chapter, and felt that Miller and Levine had
18 done their best in doing the new edition to
19 soften it and make it more appealing to a larger
20 audience.

21 Q. When you looked at those changes, did you have
22 any sense for what was driving them? I mean--

23 A. No.

24 Q. No?

25 A. I did not.

1 Q. Well, did you see them as addressing specific
2 claims advanced on behalf of evolutionary
3 theory?

4 A. I was not aware of that, no. That was not what
5 I was looking for. I was reading sentence by
6 sentence and not necessarily comprehending
7 anything that was being presented. We were just
8 hunting differences to point out.

9 Q. And it seems like when you were hunting
10 differences you were doing it in large in this
11 sort of cultural controversy you've referenced.
12 Is that right?

13 A. That's correct.

14 Q. You've referenced common descent several times.
15 Numbered Item 11 on the page we're looking at
16 now says, in same paragraph deletes common
17 descent. Do you recall any discussion among the
18 science faculty or the science faculty and the
19 administration relating to that deletion, what
20 significance it might have?

21 A. I don't recall any, no. That's not to say some
22 discussion did not occur.

23 Q. Understood. You indicated that you-- Who was
24 it, Jen Miller?

25 A. I think Jen Miller had the one book, and

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1 Mr. Baksa had the second book, and I was kind of
2 there writing. We both kind of, you know-- We
3 commonly, you know, shared because of course we
4 knew that the board meeting was imminent and now
5 here we were with a new edition, and we knew it
6 was going to present a new problem.

7 Q. A new problem or a solution?

8 A. No, a new problem in that we had been assured in
9 June that the 2002 edition of the Miller and
10 Levine book was going to be approved by the
11 board.

12 Q. Let's go back to that. Thanks, Bert. So when
13 you came away from the June 2004 meeting with
14 the board curriculum committee, it was your
15 understanding that Miller and Levine 2002 would
16 be approved by--

17 A. We were assured by that curriculum committee
18 that the 2002 book would be ordered.

19 Q. Then the new book comes, and you see it's up in
20 the air again. Is that correct?

21 A. We felt it probably would be because now there's
22 a new edition. And they always pointed out, you
23 know, why would you waste money buying a 2002
24 edition when, in fact, it's always three years
25 old even though the date says 2002 when now

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1 there is a new one which is now on the market.

2 And that was the reason I called Mr. Baksa
3 and said, you know, I hate to tell you this but
4 the new one has now been received by us, what do
5 we need to do. And that's when we sat down and
6 we attempted to go through and see where they
7 differed.

8 Q. It seems you anticipated an objection to the
9 2002 text based on it being old already?

10 A. Yes.

11 Q. Now, did you generate this document we're
12 looking at, Bert, that's got the heading,
13 Changes in the 2002 and 2004 Copyright Biology
14 Books?

15 A. I believe we had written it in pencil, and I
16 think it was my understanding that Mr. Baksa's
17 secretary actually typed the document as you see
18 it here.

19 Q. Did you have a meeting with the board curriculum
20 committee as a result of the work that we need
21 to preparing that document?

22 A. Not to my knowledge. It was summer, and it
23 would be hard to find with everybody's
24 vacations, you know.

25 Q. So you don't think there was any other meetings?

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1 A. I do not believe we ever had any meeting with
2 the board subsequent to this.

3 Q. The board curriculum committee?

4 A. With the board curriculum committee, that's
5 correct.

6 Q. If you would, Bert, please look at Miller 3, the
7 agenda for the July 2nd, 2004 board meeting.

8 A. July 12th?

9 Q. Yes. If you go to Item XIII curriculum, you'll
10 see a notation on the right hand side, table to
11 next meeting going into new edition at no
12 additional cost. Does that reflect what we just
13 talked about?

14 A. Yes.

15 Q. So it was tabled at the July 12th meeting. From
16 your standpoint, Bert, you've got this meeting
17 where you've reviewed the differences in the
18 text, and was there anything, any communications
19 that you had with either the administration,
20 members of the school board, or your science
21 faculty relating to the science biology textbook
22 between that meeting you just discussed in July
23 and the board meeting that was held on
24 August 2nd, 2004?

25 A. Not to my knowledge.

1 Q. Did you attend the August 2nd board meeting?

2 A. I don't think so because I think I was on
3 vacation. I was not in attendance at the August
4 board meeting.

5 Q. But at some point in August it seems to me based
6 on what you've said that the book Of Pandas came
7 to your attention?

8 A. My recollection is when we met in Mr. -- with
9 Mr. Baksa in July in Dr. Nilsen's office I
10 believe a copy of Of Pandas and People was given
11 to Jen to look at. Nothing was said about it
12 other than this is a book, would she please, you
13 know, look at it or, you know, read through it.
14 I did not have one. It was just given to her at
15 that time.

16 Q. Now, I just remembered something I wanted to ask
17 you about. Going back to that June 2004
18 meeting, do you recall there being any
19 videotapes or DVDs given to the science faculty
20 for review in that June meeting?

21 A. I don't know when it was, the department was
22 given a video which I believe was a set of
23 three, or certainly there were three videos
24 involved. And on the last in-service day the
25 biology department viewed that video. And it

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1 had to do with discrepancies in the Darwin
2 theory.

3 And while we were viewing the video,
4 Mr. Baksa came into the building, and I jokingly
5 said, see, we're doing what you asked us to do,
6 we're watching this video. And he asked us, you
7 know, how we felt about it. And we said, there
8 is some validity to it. Now, are we going to
9 use it in our classroom, but, you know, we were
10 willing to say, yes, there certainly is some
11 validity to what we're looking at.

12 And interestingly enough, one of the people
13 on the video was one of the two authors of the
14 bio book. But, yes, we did view one video, and
15 it was basically on the last day of the school
16 year as I recall.

17 Q. And in that meeting in June do you recall there
18 being some discussion of gaps in evolutionary
19 theory and Jen Miller saying something like, you
20 know, we can present the information on gaps?

21 A. As a compromise to this curriculum committee,
22 we -- when I say we, certainly the biology
23 teachers because I don't teach it -- would be
24 willing to point out that there are some gaps in
25 this theory. And we were willing to do that

1 thinking that we could maybe get this settled if
2 this was going to be what would make him happy.

3 Q. Do you recall Jen saying something to the effect
4 of I show the gaps to my students anyway?

5 A. Many of the biology teachers have already done
6 that as past practice. But now what we would
7 have been directed to do at that point is to see
8 to it that every biology teacher would basically
9 be teaching this as a consistency.

10 Q. Okay, I see. Back now to July and Of Pandas,
11 you think it was then that Jen got a copy to
12 review?

13 A. Yes.

14 Q. How about yourself, did you ever-- I know it's
15 not your subject matter, but did you ever review
16 the text?

17 A. Yes, I did. I read only the beginning which was
18 the overview. There's a beginning which is the
19 overview which covers all of the chapters, and
20 then there's obviously what follows it which
21 goes into greater depth. I read the overview.

22 Q. What was your take on it, Bert, after you
23 reviewed the text?

24 A. I felt that the reading level of the text
25 material would never have been suitable to a

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1 ninth grader. I have a master's degree, and I
2 could barely get through it. Now, granted it is
3 not my area of expertise, but it was very, very
4 difficult to read. I felt that it was not good
5 science, and I felt that there were some
6 statements in there actually concerning
7 chemicals that were not accurate.

8 I further went to the front of it. I
9 looked who published it, tried to look up some
10 information on the publisher. To my knowledge,
11 this company that's out of Texas prior to the
12 publishing of this book has only ever published
13 labels in farming and manuals.

14 I furthermore then tried to research the
15 authors to see what their background was. I
16 looked at who had reviewed the book and found
17 there was one high school teacher and everybody
18 else was college professors. So I felt that the
19 book was more suitable to freshmen or sophomore
20 college students than it ever would have been to
21 a ninth grade student body.

22 Q. You said you felt there was not good science.
23 What did you mean by that, Bert?

24 A. Well, that it had some statements in it -- one
25 had to do with the oxidation of carbon

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1 compounds -- which when you read it just was not
2 accurate. It had things in it which were not
3 going to be able to be proven, okay? In other
4 words, if you-- I mean, I felt that what they
5 were putting forth was a belief and not a
6 theory.

7 Q. You've referenced some things that you think
8 couldn't be proven and so on. I just want to
9 make sure I understand what you're getting at
10 there. Tell me more about that, Bert, when you
11 say things that couldn't be proven.

12 A. Well, a belief is difficult to prove in a lab
13 situation which is everything in science is
14 pretty much lab based. For instance, I cannot
15 prove what God is or is not. It is a belief.
16 Where a theory has been time-tested explanations
17 which basically cover observations and is our
18 foundation in science. It is different from a
19 law, and it is different from a hypothesis.

20 Q. I take it you understood the text to be
21 advancing claims that were not -- did not
22 satisfy your conception of what a theory was.
23 Is that correct?

24 A. That's correct.

25 Q. And it seems, Bert, from what you've said that

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1 your overall criteria seems to be testable in a
2 lab situation?

3 A. Yes.

4 Q. Apart from these reservations you've referenced,
5 anything else? You said earlier that it was
6 during this period of time that you first heard
7 the term intelligent design. Did you first hear
8 it through your review of this book--

9 A. Yes.

10 Q. --learned of the term intelligent design? How
11 about did you ever speak with Jen Miller about
12 the text Of Pandas?

13 A. Not until we returned to school that fall which
14 was 2004.

15 Q. Just when does school start, September?

16 A. No. Usually it's the last week of August. I
17 think because of the building project one year
18 we went after Labor Day which I can't remember
19 which year that is. But that was due to the
20 building project. But normally we begin school
21 the last week of August.

22 Q. Tell me what you recall about your discussions
23 with Jen about the book.

24 A. We talked about the readability of the book --
25 and everybody who looked at it maintained that

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1 the readability was too far above the level of
2 the students it was supposed to serve -- some of
3 the theories which were presented in the book.

4 And I think I have some notes somewhere
5 having to do with notes that I had taken when we
6 read the book because I remember asking I don't
7 know whether it was Mr. Buckingham, but it was
8 somebody on the curriculum committee, to explain
9 what this meant that I read in the book because
10 I as a scientist could not figure out what they
11 were basically trying to say and did not get a
12 response to that.

13 It was a pretty sophisticated vocabulary,
14 and their explanations were well beyond the
15 comprehension of ninth graders even if they were
16 honor students. We did discuss that, though.

17 Q. You discussed that with Mr. Buckingham?

18 A. No, with Jen.

19 Q. Oh, with Jen?

20 A. And the department.

21 Q. Let's ask about that, how about Rob Eshbach, do
22 you recall any discussions with him?

23 A. I do not know whether he had a copy of the book,
24 but he certainly read excerpts from the book.

25 Q. You said you did some research on the book. Did

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1 you find criticisms of it online?

2 A. Yes.

3 Q. Did you collect those?

4 A. Yes.

5 Q. I know that you provided me with some documents.

6 A. Yes. And those are the ones that I had in my
7 possession.

8 Q. Do you recall discussing the book with Bryan
9 Rehm? Was he still at the district at that
10 time?

11 A. No, he was not.

12 Q. Discussions with members of the board curriculum
13 committee about the book?

14 A. I don't remember discussing Of Pandas and
15 People. I never heard of the book other than
16 when it was given by Mr. Baksa to Jen at that
17 July meeting. I was not at the August board
18 meeting when the vote to purchase the at that
19 point 2004 edition of Miller and Levine came up
20 for the vote. It went to a four/four tie. Then
21 Mrs. Yingling switched to a five/three.

22 And of course I was away but was appalled
23 when I got back because I had been assured by
24 the curriculum committee that this book was
25 going to go through and then come to find out

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1 that Mr. Buckingham had voted no on the book
2 unless Of Pandas and People would serve as a
3 companion book and be given to each student.
4 Now, that was the first time I had ever heard
5 anything about this book becoming a student
6 text, so.

7 Q. When you returned, obviously somebody informed
8 you as to what had transpired at the August 2nd
9 board meeting. Who was that?

10 A. Well, I can't tell you exactly. I do know that
11 before I left we had prepared all of the
12 purchase orders so that if this were approved we
13 had called the book companies, and the book
14 companies had assured us that within receipt of
15 the fax on the day after the board had approved
16 it they would have those textbooks in our
17 possession within two weeks. So we assumed that
18 this was going to go ahead.

19 Now, the purchase orders were in the hands
20 of Dawn Spahr, not a relative of mine who was
21 the secretary to our principal, and they were
22 automatically when the vote went down faxed to
23 them.

24 Q. So the book was approved and purchased?

25 A. That's correct.

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1 do you seem to recall that Casey Brown had not
2 reviewed the Of Pandas text?

3 A. I have no knowledge of that. I don't know.

4 Q. I'm sorry, then I mistook what you just said.

5 A. I think she was asking of Mr. Eshbach who
6 represented the science department if we had any
7 knowledge of the Of Pandas and People book, and
8 he said he did not because he was not at either
9 of these other two.

10 Q. So, in other words, if Jen Miller had been there
11 or you had been there, you would have known, but
12 Rob Eshbach had not been at those meetings?

13 A. That's correct.

14 Q. Do you recall a meeting in August where this --
15 the use of Of Pandas was discussed with the
16 board curriculum committee?

17 A. Yes.

18 Q. Tell me what you recall about that meeting.

19 A. What I recall about the meeting is that, number
20 one, the science department was certainly based
21 on the fact of its readability or lack thereof
22 happy to spend the kind of money that would be
23 necessary to purchase those companion books for
24 each student because we ordered 250 books, so
25 that would mean 250 additional of these books.

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1 And budget constraints were pretty narrow.

2 And of course one of our questions was
3 where are the extra moneys for these books going
4 to come from. Plus we thought they would not
5 serve the students well because of their
6 difficulty in vocabulary and readability.

7 So then it was suggested, and I cannot
8 remember by whom, that the Panda book only be
9 used as a reference text, that they be placed in
10 the science classroom for use for students who
11 chose to read them or whatever. And we're told
12 that the goal of the administration was to place
13 the books in the classrooms as reference as
14 opposed to having each student have his own.

15 Q. Do you recall who specifically made that
16 suggestion?

17 A. No. I believe Mr. Baksa and Dr. Nilsen were
18 trying to appease both sides that, okay, if they
19 say we must have Of Pandas and People and we say
20 we do not want the students to carry two books,
21 we have enough trouble truly trying to get them
22 to carry one, that again we tried to compromise.
23 You know, we thought that this would be an
24 acceptable possible solution.

25 Q. You say you tried to compromise. Did the

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1 faculty indicate an openness to that use of Of
2 Pandas?

3 A. You mean the science faculty?

4 Q. Yes.

5 A. Biology teachers?

6 Q. Yes.

7 A. They agreed.

8 Q. Let me ask you, we referenced that fall meeting
9 in 2003 with Alan Bonsell. Had you done
10 research on the legality of presenting
11 creationism or intelligent design?

12 A. I did not do the research. Somebody who was a
13 member of the association, and it was actually
14 the legislative committee, when this came to be
15 actually did the research and handed me the
16 packet of papers.

17 Q. When this came to be, meaning this dispute or
18 issue came up?

19 A. The controversy.

20 Q. Was that in 2003 that it first came up and you
21 mentioned the issue to your association?

22 A. Well, it was wherever that meeting was with
23 Mr. Bonsell.

24 Q. That was my question, Bert. So you had the
25 materials we're talking about now prior to the

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1 meeting with Mr. Bonsell in the fall of 2003?

2 A. Yes.

3 Q. Do you recall giving those materials to
4 Mr. Bonsell?

5 A. I remember having those materials. I remember
6 when the discussion arose I actually had read
7 from those materials some things that were
8 highlighted. I believe one member of the board
9 asked if they could have copies of those things
10 and was given to one of the secretaries to make
11 copies of. I cannot tell you for certain
12 whether it was Mr. Bonsell or whether it was
13 Casey Brown, but it was somebody. Somebody did
14 take those materials, copies of them.

15 Q. So they got a copy of your materials?

16 A. That's correct.

17 Q. Bert, if you had to sum up what those
18 materials-- Did you provide me those materials?

19 A. I think so.

20 MS. PENNY: Why don't we go off the record
21 a moment and make sure.

22 (Discussion held off the record)

23 MR. GILLEN: We are back on the record and
24 have confirmed that Bert in response to my
25 subpoena provided me with a set of documents

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1 labeled research which I am going to mark as--
2 I'm going to mark the whole packet as
3 B. Spahr 1.

4 (B. Spahr Deposition Exhibit #1 marked for
5 identification)

6 BY MR. GILLEN:

7 Q. What we've marked now is B. Spahr 1, and, Bert,
8 I'm going to ask you a few things. If we flip
9 through this collection of documents, we come to
10 a set that has a handwritten hash mark in the
11 upper right hand corner, and about a third of
12 the way down the document a bold heading that
13 says, what does the Constitution say about
14 teaching the religious theories of creation.
15 And then beneath that there's another heading,
16 what is creationism? What is creation science?
17 What is intelligent design theory? And then
18 there's some highlighting on that page. I'm
19 going to ask you, Bert, do you believe that
20 these are documents you brought to the meeting
21 with Alan Bonsell in the fall of 2003?

22 A. I believe I brought them to some meeting. I
23 cannot specifically say if it was that
24 particular one.

25 Q. Do you recall a board member asking you for

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1 copies of these documents?

2 A. Yes, I do.

3 Q. Do you recall which one?

4 A. Not specifically.

5 Q. Do you have a sense for who -- which board
6 members it might have been who asked for copies?

7 A. I believe it may have been Mr. Bonsell. It
8 might also have been Casey Brown.

9 Q. In the meeting we're referencing, did you have
10 discussion with the members of the board
11 curriculum committee concerning the legality of
12 presenting creationism in the classroom?

13 A. Yes. And we actually read from some of these
14 documents.

15 Q. The document we've just discussed, is that the
16 only document that you brought to the meeting
17 you're recalling?

18 A. I cannot say that for sure. I don't know how
19 many of these documents I would have had in my
20 possession at that time.

21 Q. But the document we're talking about now is
22 highlighted, and if I understand you correctly,
23 it's that highlighting that makes you confident
24 you brought it to the meeting?

25 A. I brought it to some meeting, yes, yes.

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1 Q. Do you recall discussing the legality of
2 teaching creationism with Mr. Bonsell in the
3 fall of 2003?

4 A. I know we brought up in someone's presence this
5 idea because we actually read may a teacher of
6 science who teaches evolution also teach
7 religious theories of creation and then said,
8 you know, these are the responses which we have
9 found and our concern is that we will go into
10 the classroom and be asked to commit an illegal
11 act.

12 Q. Do you recall Mr. Bonsell responding to that--

13 A. No, I do not.

14 Q. --concern at that time?

15 A. He was listening and was very open to what we
16 had to say. I do not remember him giving us an
17 answer.

18 Q. How did you come by the documents that you
19 brought to this meeting which we're discussing?

20 A. A member of our professional organization who I
21 believe is on the legislative committee when
22 this topic came up researched religion in the
23 science class, printed it off of the Internet,
24 and presented it to me as department head.

25 Q. Bert, if you would just page through the

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1 journal that contained articles having to do
2 with intelligent design and creationism and
3 evolution and then tried to find that magazine
4 or that journal. We did not have it available
5 in our high school.

6 Q. Do you know when you made that note, Bert?

7 A. No, I do not.

8 Q. Is the handwriting above the reference to
9 skeptical inquirer Volume 27, is that your
10 handwriting?

11 A. No. That is the handwriting of Priscilla Lauer
12 who also gave us some reference material on this
13 issue. She has written some letters to the
14 editor. She is a biology teacher and was very
15 concerned over this issue and, therefore, did
16 some research on her own and presented us with
17 this material.

18 Q. Is this material that you also brought to the
19 meeting with Mr. Bonsell?

20 A. I do not know that. I did not carry all of the
21 reference materials with me to that meeting. I
22 believe that I carried only the ones that had to
23 do with religion in the public school systems
24 and some of the court cases.

25 Q. Bert, were you more focused on the legality as

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1 you saw it at that time?

2 A. Yes.

3 Q. Do you think you had looked at this material
4 prior to the fall -- prior to the meeting we're
5 discussing?

6 A. I don't think so.

7 Q. You don't?

8 A. No.

9 Q. Why is that?

10 A. I just didn't have time since my primary
11 obligation is to teach students and I had labs
12 to set up and tests to grade. So I did not read
13 through all of these articles which are here in
14 the research packet certainly prior to that
15 meeting.

16 Q. Sure. How about do you think that you had
17 received these documents from Ms. Lauer prior to
18 the meeting we're discussing?

19 A. I can't answer that. My guess would be that
20 that could not be possible because the reference
21 to the skeptical inquirer is from a
22 September/November 2003 journal. And I now
23 have, and I think you do as well, that reprint
24 of that article. We actually didn't have the
25 magazine, but we basically, I believe, were able

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1 to acquire a reprint of it where it talks about
2 science and religion.

3 Q. As we sit here today, is there any way for you
4 to tell me any other documents that you may have
5 brought to this meeting we're discussing?

6 A. Not to my knowledge.

7 Q. It's just the highlighting really that allowed
8 you to distinguish these?

9 A. That's correct.

10 Q. Bert, we've been discussing a couple meetings of
11 the board curriculum committee from the spring
12 through August 30th, 2004. Do you recall
13 discussing these issues of legality with the
14 board curriculum committee at these board
15 curriculum committee meetings we discussed?

16 A. No, I do not.

17 Q. Do you recall anything else about this
18 August 30th meeting in which there was
19 discussion of using Of Pandas as a reference
20 text?

21 A. Nothing more than we felt that a compromise
22 might possibly be reached in not having each
23 student have Of Pandas and People but simply
24 have available. And I think the suggestion was
25 made that there were to be 20 copies of the book

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1 placed in each of the three biology classrooms.

2 Q. How about any curriculum change, did that come
3 up during this August 30th meeting or around
4 this time?

5 A. Not to my knowledge.

6 Q. In the meetings that we've discussed here from
7 the spring through August 30, 2004, do you
8 recall any discussion relating to curriculum
9 change at that time?

10 A. No.

11 Q. So what happened next, Bert, from your
12 perspective? I mean, there's this August 30th
13 meeting with discussion of putting the Of Pandas
14 in the classroom as a reference text. What's
15 the next step in the story as you see it?

16 A. Well, the Miller and Levine book, the biology
17 book, arrived prior to the beginning of school.
18 They were appropriately stamped and numbered and
19 distributed among the biology teachers that they
20 would basically distribute them on the first day
21 of school. Nothing else occurred until we got
22 to the beginning of October.

23 Q. And that's what I wanted to ask you. In the
24 period between August 30th and October 1, were
25 you part of any discussions relating to the

1 contemplated curriculum changes?

2 A. Not to my knowledge. I'm sure at that point
3 they would have been cited on this time line.
4 The first few weeks at the beginning of school
5 are rather hectic to say the least, and I think
6 we were all basically-- Now, remember, we were
7 in new rooms having to move all of our supplies,
8 and so we were pretty busy trying to get the
9 start of school.

10 Q. How about do you know whether any of your
11 science faculty, in particular your biology
12 teachers, were having discussions with the
13 administration with respect to potential
14 curriculum change during this period from
15 August 30th through October 1st?

16 A. Not to my knowledge, because usually if they
17 would have been there, I would have been with
18 them.

19 Q. And is that because in your capacity as science
20 department head chair?

21 A. I'm the facilitator. If the administration
22 would direct me to see to it that my biology
23 teachers basically work on curriculum or work on
24 assessments or standards, I need to know what
25 the direction is so I can see to it that they

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1 would, in fact, get their job done, so.

2 Q. That brings us to October, and if you'd look at
3 Miller 3, we'll flip to the board agenda for a
4 board meeting that was held on October 4th,
5 2004. If you look at the top right hand corner
6 of the cover page, the first page of the agenda,
7 there's the initials BS. Do you think that's--

8 A. Those are mine, and this is my handwriting.

9 Q. Did you attend that meeting?

10 A. If my notes are on here, I must have. I know
11 for certain I was at the October 18th one, but
12 obviously I was at this one as well.

13 Q. If you flip back to XIII, there's a notation
14 there. And opposite the heading curriculum, can
15 you tell me what that points to, Bert?

16 A. Yes. Under curriculum, the superintendent
17 approved the donation of two classroom sets of
18 25 each of the books Of Pandas and People. The
19 classroom sets will be used as references and
20 will be made available to all students.

21 Casey Brown who was at that point still a
22 member of the board asked at that point whether
23 the district would be accepting other books on
24 the subject of basically evolution/creationism.

25 Q. Did she receive a response from the board at

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1 that time or any members of the board?

2 A. I believe the response was they would consider
3 each gift or presentation individually.

4 Q. Okay. And at the bottom of that Page 6 of the
5 agenda for the October 4th meeting there's a
6 circled heading, Policy?

7 A. I see that.

8 Q. Does that trigger any recollection on your part?

9 A. None whatsoever.

10 Q. Then if we look at Miller 4, your time line, the
11 page with the Number 2 circled in the upper
12 right hand corner, we see an entry for
13 October 8th, 2004. Take a look at that, Bert.
14 Have you?

15 A. Um-hum.

16 Q. Tell me, does this reference a meeting you had
17 with Mr. Baksa?

18 A. I don't know whether I would say meeting. It
19 was not uncommon for Mr. Baksa if he was in the
20 building to stop in to one of our rooms. I
21 don't know whether it would be called a formal
22 meeting. But certainly he came and presented us
23 -- now, when it says us, I am not exactly sure
24 what that means -- but the change in curriculum
25 including the mention of intelligent design.

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1 Now, this was given to us in written form
2 without any input from us. And the Panda book
3 was listed as a reference. That was the first
4 time we had seen this. We were not involved in
5 the curriculum meeting where this was done.

6 Q. Bert, do you recall being presented with a
7 document--

8 A. Yes, I do.

9 Q. --at this sort of drop-by meeting?

10 A. Yes, which is Miller 3.

11 Q. Does that look like it?

12 A. There were three different documents. I would
13 have to--

14 Q. I know what you're getting at, but--

15 A. I mean, I would have to see it somewhat closer
16 to know which one was first.

17 Q. Well, this one's marked draft.

18 A. Yes, this is the document.

19 Q. For the record, I'm showing you a page from the
20 exhibit that's been marked Miller 3. It is a
21 document that has draft stamped across the
22 middle of it and spray adhesive in the upper
23 right hand corner. It's a planned
24 instruction/curriculum guide that apparently has
25 been changed and is in draft form. Is that the

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1 document you believe that you saw on
2 October 8th?

3 A. That is correct.

4 Q. Tell me, Bert, I know a little about your
5 reaction to that document. Explain in detail,
6 if you would, what you saw that was significant
7 and what thoughts.

8 A. What was different is the end of the last-- In
9 the second column the part that begins students
10 will be made aware of the gaps and problems in
11 Darwin's theory and of other theories of
12 evolution including, but not limited to,
13 intelligent design, we never agreed or were
14 asked, I might add, to have that intelligent
15 design placed there or the reference over in
16 materials and resources which refer to Of Pandas
17 and People placed there.

18 Q. Now, let me ask you a little about that. I
19 mean, there had been some discussion of putting
20 Of Pandas as a reference text in the classroom,
21 right?

22 A. In the classroom.

23 Q. But you apparently were not thinking of putting
24 it in the curriculum. Is that correct, Bert?

25 A. We were not-- We do not cite other reference

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1 books that are used in other classes. And,
2 therefore, when we saw this, we were really
3 quite surprised that that particular reference
4 book was there.

5 Q. Surprised because other reference books are not
6 listed?

7 A. Yes.

8 Q. Then there's some language which you've referred
9 to under the -- at the foot of the column that's
10 headed Unit Content/Concepts/Process. Now, it
11 starts out, students will be made aware of
12 gaps/problems in Darwin's theory and other
13 theories of evolution. Was that consistent with
14 matters you had discussed up until this point?

15 A. Yes, it was.

16 Q. So it was the addition of including, but not
17 limited to, intelligent design that was what
18 attracted your attention?

19 A. That was what the department, biology
20 department, specifically objected to.

21 Q. Do you recall discussions between yourself and
22 Mr. Baksa relating to that change?

23 A. I think we exchanged words on the idea.

24 Q. Exchanged words has a certain connotation.

25 A. No, I didn't mean it that way. I mean, but was

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1 it a formal meeting, I don't think so. I know
2 that members of the department looked at this
3 when we were handed the draft. And I'm sure we
4 shared those concerns when we also sent an
5 amended curriculum how the science department
6 wanted this to appear.

7 Q. Yes. We definitely will get to that. Let's
8 see, who was present when Mr. Baksa stopped by
9 with this draft document?

10 A. I have no idea.

11 Q. Do you have a sense that your biology--

12 A. The biology department does not meet where the
13 chemistry room is, so they're in the other end
14 of the building. So, you know, if he came some
15 evening after school-- Now, Rob Eshbach is
16 right across the hall. He may have been in the
17 room. But I have no idea or recollection who
18 might have been in the room at the time.

19 Q. And that's all I'm trying to get at. It sounds
20 like it wasn't a meeting called for the
21 purpose--

22 A. It was not a formal meeting, no, it was not.

23 Q. You were getting this as head of the science
24 department?

25 A. That's correct.

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1 Q. Did you take it back to your biology teachers?

2 A. Yes.

3 Q. Did they express any thoughts in addition to
4 those you've already told me about?

5 A. Yes. They or we, meaning the biology
6 department, sent an amended curriculum to this
7 draft in which the reference to Of Pandas and
8 People was removed, and the last part that had
9 to do with including, but not limited to,
10 intelligent design was removed. And I believe
11 there was a period at the end of, of other
12 theories of evolution, although I do not have
13 that.

14 Q. Bert, if you would, look at Miller 7.

15 A. That's our amended version of the draft that the
16 science department agreed to be presented.

17 Q. Bert, we're looking at Miller 7. As you've
18 said, there's three memos here which in turn
19 reference three enclosures titled XI-A, XI-B,
20 and XI-C. I would ask you to direct your
21 attention to the curriculum chart following the
22 cover memo which references enclosed in XI-B.

23 MS. PENNY: That's Bates Number 20.

24 MR. GILLEN: Right, with Bates Number 20 in
25 the lower left hand corner.